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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Petition of The Regents of the University of California, the School Project for Utility Rate Reduction, and E&B Natural Resources Management Corporation to adopt, amend, or repeal a regulation pursuant to Public Utilities Code § 1708.5.	Petition 22-01-___ (Filed January 26, 2022)

PETITION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, THE SCHOOL PROJECT FOR UTILITY RATE REDUCTION, AND E&B NATURAL RESOURCES MANAGEMENT CORPORATION TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO PUBLIC UTILITIES CODE § 1708.5

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January 26, 2022

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In accordance with Rule 6.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), The Regents of the University of California (UC), the School Project for Utility Rate Reduction (SPURR), and E&B Natural Resources Management Corporation (E&B Natural Resources), hereinafter referred to collectively as Petitioners,[1] hereby submit this petition to adopt, amend or repeal a regulation pursuant to Section 1708.5 of the Public Utilities Code. Prior to filing, Petitioners consulted with the Commission's Public Advisor to identify any additional persons upon whom to serve the petition and, per the Public Advisor's guidance, Petitioners have served the petition on the service lists for Rulemaking 17-06-026, Petition 18-09-001, and Rulemaking 19-03-009.

[1] Pursuant to Commission Rule 1.8(d), E&B Natural Resources affirms that the representatives of UC and SPURR identified on the cover page hereto have authorized E&B Natural Resources to file this petition on behalf of their respective organizations.

I. INTRODUCTION

Petitioners seek relief from the unintentionally inequitable effects of certain orders of the Commission and tariffs of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E), hereinafter referred to collectively as the investor-owned utilities (IOUs), implementing the Direct Access (DA) program and the Power Charge Indifference Adjustment (PCIA). The relief Petitioners request is with respect to customer accounts that were assigned a PCIA vintage of 2017 or 2018 but were not allowed to move to DA service until January 2021. Due to the mismatch between the PCIA vintages assigned to these accounts and their dates of enrollment in the DA program, the accounts have been, and continue to be, charged twice for the same IOU procurement costs, once via the generation charges the subject DA customers paid while they were still on bundled service, and a second time in the form of the PCIA surcharges they are currently paying.[2] To redress this situation, Petitioners request that the Commission issue an order: (1) relieving the subject DA customers from paying PCIA surcharges that recover procurement costs they already paid while they were on bundled service; and (2) directing the IOUs to refund all duplicative PCIA surcharges the subject DA customers have paid since their January 2021 DA enrollments.

II. BACKGROUND

A. DA Program: Inception and Suspension

Direct Access refers to commercial arrangements whereby retail end-use customers of the IOUs gain access to the wholesale power market through "direct transactions" with competitive

[2] Bundled service customers rely on their utility for both transmission and distribution (T&D) service and power supply (generation) service.

retail suppliers known as electric service providers (ESPs).[3] The DA program was launched in 1998 as part of the comprehensive restructuring of California's electric industry, with all retail customers of the IOUs having the option to either remain on bundled utility service or purchase electricity on a competitive basis from ESPs. In the years that followed, the DA program grew to approximately 16% of the IOUs' combined retail load. The DA program was suspended, however, in the wake of events in 2000-2001 that lead to exponential increases in wholesale power costs.

On January 17, 2001, the Governor issued a proclamation declaring California's electricity markets to be in a state of emergency that threatened the solvency of PG&E, SCE and SDG&E. Shortly thereafter, the Legislature passed emergency legislation authorizing the Department of Water Resources (DWR) to procure wholesale power on behalf of the IOUs' bundled service customers.[4] The emergency legislation also directed the Commission to suspend the right of customers to "acquire" DA service for as long as DWR supplied power to the IOUs under that authorization.[5] Pursuant to that directive, the Commission issued an order prohibiting IOU customers from entering into new contracts or agreements for DA service, effective September 20, 2001, while allowing customers with existing DA arrangements to remain on DA service.[6]

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[3] *See* Pub. Util. Code §§ 331(c) (defining "direct transactions"), 365(b)(1) (requiring the Commission to authorize "direct transactions between electricity suppliers and end use customers") and § 218.3 (definition of "electric service provider").

[4] Assembly Bill 1X (AB 1X), Stats. 2001 (1st Extraordinary Sess.), ch. 4.

[5] AB 1X, § 4 (adding Water Code § 80110).

[6] D.01-09-060.

In a March 2002 decision, the Commission affirmed the September 20, 2001 effective date for the suspension of DA and adopted rules suspension implementation rules.[7] The Commission's approach to implementing the DA suspension was to effect a market "standstill."[8] The Commission thus allowed customers with DA contracts in place as of September 20, 2001 to continue their participation in the DA market, while at the same time prohibiting customers from placing additional accounts on DA service.[9] The Commission explained the purposes of these rules was to "prevent the addition of new DA load and the resulting shift of DWR costs to bundled service customers."[10]

The Commission subsequently modified the suspension rules to allow customers to add accounts to DA service, provided the accounts are associated with "new facilities that represent a replacement and/or relocation of existing facilities," but only on a "one-for-one" or "account-by-account" basis, and subject to the limitation that the added account(s) not result in a net increase in the customer's total DA load within the applicable IOU's service territory.[11] The Commission later modified the suspension rules to eliminate the one-for-one/account-by-account limitation, such that the modified rules "permit relocations of DA load so long as there is no net increase in the customer's amount of total eligible DA load within each utility service territory."[12] Under the modified suspension rules, the total amount DA-eligible load was effectively capped at the

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[7] D.02-03-055.

[8] D.02-03-055 at 19.

[9] *Id.* at 19 and 23 (Rule 5).

[10] *Id.* at 20.

[11] D.03-04-057 at 21, Finding of Fact 5, and Appendix A at 1 (modified Rule 5).

[12] D.04-02-024 at 1.

collective amount of DA load allowed under all the individual DA contracts in place on September 1, 2021.

B. DA Program: Cap Increases and Enrollment Procedures

In 2009, the Legislature directed the Commission to authorize additional DA transactions up to a specified kilowatt-hour (kWh) limit.[13] More precisely, the legislation directed the Commission to establish a cap on the DA load allowed in each IOU's service territory that is equal to "the maximum total [kWh] served by [ESPs]" in the IOU's service territory during "any sequential 12-month period" since the DA program's institution in April 1998.[14] While the Commission dubbed this mechanism the DA Allowance,[15] the mechanism is more commonly referred to as the DA Load Cap.

In an October 2010 decision, the Commission adopted enrollment procedures to assign the additional load under the DA Load Cap to eligible non-residential customers over a four-year phase-in period.[16] At the rules in effect at the time, customers were required to provide their utility with six months advance notice of their intent to either enroll in the DA program. The form used to provide such notice is referred to as a Notice of Intent (NOI). Under the enrollment procedures adopted in 2010, customers were required to submit their NOIs during an annual open enrollment window (OEW). Each IOU then assigned the kWh available under the DA Load Cap to customers in the order they submitted their NOIs, up the applicable IOU-specific limit, with any remaining customers that had submitted NOIs being placed on a waitlist.

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[13] Senate Bill 695, Stats. 2009, ch. 337.

[14] *Id.*, sec. 2 (adding § 365.1 to the Public Utilities Code).

[15] D.10-03-022 at 1 and 7.

[16] D.10-03-022 (as modified by D.10-05-039); rehearing denied by D.10-10-024.

In 2012, the Commission adopted an annual lottery process for DA enrollments.[17] For purposes of the DA lotteries, the IOUs use a randomizer to assign numbers to customers who submit NOIs during the applicable OEWs, which are held during the second week of June. As before, customers that do not "win" the lottery are placed on the applicable IOU's waiting list for that year. Then, as space under the DA Load Cap becomes available, the IOUs are required to notify customers on the waitlists that they can now transfer to DA service, with the resulting enrollments being processed as provided in the IOUs' DA tariffs.

In 2018, the Legislature increased the statewide DA Load Cap by 4,000 gigawatt-hours (GWh).[18] In a May 2019 decision, the Commission implemented the increased DA Load Cap and adopted special DA enrollment procedures for that purposes.[19] Among other things, the Commission determined that customers enrolling in the DA program under the 4,000 GWh expansion would not be allowed to start taking DA service until January 2021.[20] The Commission also determined that the 4,000 GWh would be apportioned equally between the 2019 and 2020 waitlists—i.e., 2,000 GWh would be assigned to customers on the IOUs' 2019 waitlists, and the remaining 2,000 GWh would be assigned to customers on the 2020 waitlists.[21] For space that becomes available under the pre-expansion DA Load Cap, the Commission directed the IOUs to continue processing customer enrollments using the DA lottery process.[22]

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[17] D.11-12-018 (as modified by D.14-07-028).

[18] Senate Bill 237, Stats. 2018, Ch. 600, sec. 1 (amending Pub. Util. Code § 365.1).

[19] D.19-05-043 (as modified by D.19-08-004).

[20] *Id.* at 13.

[21] *Id.* at 19-20.

[22] *Id.* at 21.

C. PCIA: Vintages

The PCIA has its origins in the electricity crisis of 2000-2001, the resulting DA suspension, and the Commission's adoption of cost responsibility surcharges (CRS) to ensure DA customers were held responsible for the IOU and DWR procurement costs incurred on their behalf during the crisis, thereby "prevent[ing] such costs from being unlawfully and unfairly shifted to 'bundled' utility customers."[23] The Commission further explained the intent behind the DA CRS is to "ensure bundled service customers indifference" with respect to customers departing to DA service.[24]

One of the core components of the original DA CRS was the now-defunct DWR Power Charge, which recovered from non-exempt DA customers their share of the above-market costs of DWR's procurement contracts.[25] The DWR Power Charge was subsequently rolled into the PCIA, which was designed to recover both (a) the remaining above-market DWR procurement costs that were previously recovered through the DWR Power Charge and (b) the above-market costs of the IOUs' "New World" procurement on behalf of bundled customers that subsequently move the DA service.[26] To implement the PCIA, the Commission adopted the vintaging

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[23] D.02-11-022 at 2.

[24] D.02-04-067 at 7.

[25] D.02-11-022 at 4. Customers that remained on DA service during the 2000-2001 electricity crisis—i.e., "continuous DA" customers—were exempted from the DWR Power Charge because the load attributable to such customers was not included in the demand forecasts upon which DWR based its procurement decisions.

[26] D.06-07-030. As used in D.06-07-030 and subsequent decisions, "New World" procurement refers to generation resources contracted, constructed, or otherwise acquired by the IOUs since January 1, 2003, when they resumed responsibility to procure power on behalf of their bundled service customers. The above-market costs of "Old World" procurement contracts and generation resources acquired by the IOUs prior to January 1, 2003, are recovered through the ongoing Competition Transition Charge (CTC).

convention that lies at the heart of the harm inadvertently imposed on Petitioners and the relief they request in this petition.

As described by the Commission, vintaging is "the process of assigning a departure date to departing customers in order to determine those customers' generation resource obligations."[27] The Commission explained the purpose of vintaging as follows:

> To implement the stranded cost recovery principles adopted in D.04-12-048 [with respect to New World procurement], the IOUs must track the generation costs, including the costs of certain generation commitments, incurred to serve departing customers up to the point when a particular customer departs and the IOU no longer provides procurement services to serve its load. The law permits the recovery of stranded costs from those customers who are responsible for stranded costs related to resource and contractual commitments made by the IOU up-until the time of the customer's departure and that departing customers should bear no cost responsibility for such commitments the IOU makes after their departure.[28]

When it adopted the vintaging convention, the Commission observed that "determination of a departure date is extremely difficult, especially one that tracks customers by the day, the week or the month of departure and vintages them accordingly."[29] To address this problem, the Commission considered various approaches to vintaging, all of which entailed tradeoffs in terms of accuracy versus administrative complexity.[30] After weighing the pros and cons, the Commission adopted SCE's vintaging proposal, which it summarized as follows:

> SCE proposes to vintage the departing customers by the calendar year in which they depart and on whether they depart in the first or second half of the calendar year. Customers leaving or providing SCE a binding notice of intent to leave in the first half of 2009

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[27] D.08-09-012 at 59.

[28] *Id*.

[29] *Id.*

[30] *Id.* at 64-68.

> would be assigned a vintage that would include all the resources that SCE contracted for up through December 2008. For example, a customer that departs in April 2009 (first half of 2009) will be responsible for the stranded costs associated with utility commitments made through December 2008. However, a customer that departs in September 2009 (second half of 2009) will be responsible for the stranded costs associated with utility commitments made through December 2009. SCE adds that it should be understood that "the time a commitment is made" refers to when SCE executes a contract or begins the construction of a new generation resource, not when deliveries begin under the contract or the generation resource becomes operational.[31]

To restate: a DA customer is assigned a PCIA vintage based on the timing of the customer's NOI. If the NOI is submitted in the first half of the year, the customer is assigned the PCIA vintage for the year prior (e.g., a customer that submitted an NOI in June 2017 would be assigned a 2016 PCIA vintage). If the NOI is submitted in the second half of the year, the customer is assigned the PCIA vintage for that year (e.g., a customer that submitted an NOI in July 2017 would be assigned a 2017 PCIA vintage).

D. PCIA: True-Up Mechanism and PABA Surcharges

In an October 2018 decision, the Commission adopted an annual true-up mechanism for the PCIA to "ensure that bundled and departing load customers pay equally for the above-market costs of PCIA-eligible resources."[32] To facilitate implementation of the annual PCIA true-up, the Commission directed the IOUs to each establish a Portfolio Allocation Balancing Account (PABA) to track the costs and revenues associated with their procurement portfolios, with subaccounts for each PCIA vintage.[33] Once the PCIA true-up calculations for each year are

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[31] D.08-09-012 at 61.

[32] D.18-10-019 at 3.

[33] *Id.* at 161, Ordering Paragraph (OP) 7.

completed, DA customers are charged or refunded, as applicable, the balances tracked in the PABA subaccounts through a PABA surcharge to the PCIA.

E. PCIA: Rate Cap and PUBA/CAPBA Surcharges

In addition to the PCIA true-up mechanism, the Commission adopted a rate cap to "limit the change of the PCIA from one year to the next."[34] Starting in forecast year 2020, the PCIA rate cap was set at 0.5 cents/kWh—i.e., the PCIA rate for reach vintage could not be increased by more than 0.5 cents above the prior year's PCIA rate.[35] As part of the PCIA rate cap's implementation, the Commission directed each IOU to "establish an interest-bearing balancing account that shall be used in the event that the cap is reached, in order to track any obligation that accrues for departing load customers."[36] In both PG&E's and SCE's tariffs, the balancing account is referred to as the PCIA Undercollection Balancing Account (PUBA). In SDG&E's tariff, it is referred to as the PCIA Undercollection Balancing Account (CAPBA). To the extent an undercollection accrues as the result of the PCIA cap, the undercollection is recovered from DA customers through a PUBA/CAPBA surcharge to the applicable PCIA rates.

III. PETITIONERS

In 2014, UC registered with the Commission as an ESP and, in that capacity, currently provides DA service to portions of eight campuses and three medical centers, accounting for approximately 30% of UC's annual purchased electricity. SPURR is a joint powers agency that operates procurement and consulting programs for California public education agencies; among

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[34] D.18-10-019 at 3.

[35] *Id.* at 162, OP 9a.

[36] *Id.*, OP 9b.

its many services, SPURR negotiates contracts with ESPs to provide DA service to participating agencies. E&B Natural Resources is an independent oil and gas company headquartered in Bakersfield, California. Petitioners are similarly situated in that they each have one or more IOU service accounts—or in the case of SPURR, represent the interests of members who have service accounts—that were assigned PCIA vintages of 2017 or 2018 based on the timing of their NOI submissions but were not allowed to enroll in the DA program until January 2021.

Petitioners and the DA customers they represent have suffered several harms as the result of the mismatch between the PCIA vintages assigned to the relevant IOU service accounts and the time when the accounts were finally allowed to go on DA service. First, they are paying higher PCIA rates than they would pay if their PCIA vintages were more closely aligned with their DA enrollment dates (i.e., the 2020 PCIA vintage). Second, they are paying PUBA surcharges that are designed to recover PCIA undercollections that accrued while they were still on bundled service (i.e., when they were paying bundled rates that fully recovered the IOU procurement costs incurred on their behalf). Third, they are denied refunds of PCIA overcollections that accrued while they were still on bundled service and were paying generation charges that overcollected the subject costs to the same extent from bundled customers, refunds which are paid to 2020 PCIA vintage DA customers through PABA surcharges.

The tables in **Appendix A** hereto show the PCIA rates and surcharges that Petitioners, the DA customers SPURR represents, and similarly situated DA customers have been paying, and continue to pay, under the IOUs' current and effective tariff rules and rate schedules.[37] The

[37] The PCIA rates and surcharges are presented on a system-average basis (as opposed to being specific to a particular customer class). The actual PCIA rates and surcharges charged to the customer accounts Petitioners represent and similarly situated DA customers depends on the rate classification under which they take IOU service.

tables also show the PCIA rates and surcharges that would apply if the PCIA vintage to which they were assigned aligned with their DA enrollment dates (i.e., the 2020 PCIA vintage). As the figures demonstrate, the differences between (a) the total PCIA rates (including surcharges) that DA customers with 2017 and 2018 vintages are being charged and (b) the total PCIA rates (including surcharges) applicable to DA customers that have been assigned a 2020 vintage range from approximately 0.5 cents/kWh to over 1.5 cents/kWh.

IV. REQUEST FOR RELIEF

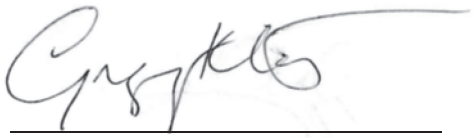
Petitioners seek relief for themselves, the DA customers SPURR represents, and other similarly situated DA customers from the obligation to pay PCIA surcharges that recover IOU procurement costs the affected customers had already paid while they were still on bundled service. They also seek relief in the form of the refund of all duplicative PCIA surcharges assessed to the affected customers after their accounts were transferred to DA service. Petitioner's request for relief is limited to customers that were assigned 2017 or 2018 PCIA vintages but were not allowed to enroll in the DA program until January 2021; however, Petitioners are not opposed to the same relief being extended to customers that have been assigned a 2019 PCIA vintage but were likewise not allowed to move to DA until January 2021.

V. CONCLUSION

To the best of Petitioners' knowledge, the issues this petition raises have not been litigated previously; instead, the issues have uniquely arisen due to unanticipated and inequitable interactions of the Commission's recent orders on PCIA surcharges with the IOUs' tariffs implementing new DA enrollments. Petitioners have informed the IOUs that they are filing this petition and, once the Commission has ruled on the merits of the petition, anticipate engaging in a collaborative effort with the IOUs and other stakeholders to determine the most reasonable and

efficient way to implement the requested relief. Petitioners have therefore limited their request for relief to a description of the relief they seek, while deferring the development of implementation measures to the envisioned collaborative process.

Respectfully submitted,



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APPENDIX A

SYSTEM AVERAGE PCIA IMPACTS: Vintage 2017 v. Vintage 2020

	PG&E		
$/kWh	Vintage 2017	Vintage 2020	Difference
PCIA without True-ups	$ 0.0348	$ 0.0345	$ (0.0003)
Add PABA True-up	$ 0.0061	$ (0.0068)	$ (0.0129)
Add PUBA True-up	$ 0.0023	$ -	$ (0.0023)
PCIA In Place	$ 0.0431	$ 0.0276	$ (0.0155)

	SCE		
$/kWh	Vintage 2017	Vintage 2020	Difference
PCIA without True-ups	$ 0.0130	$ 0.0158	$ 0.0028
Add PABA True-up	$ 0.0104	$ 0.0055	$ (0.0050)
Add PUBA True-up	$ 0.0028	$ -	$ (0.0028)
PCIA In Place	$ 0.0262	$ 0.0213	$ (0.0049)

	SDG&E		
$/kWh	Vintage 2017	Vintage 2020	Difference
PCIA without True-ups	redacted	redacted	
PCIA With PABA True-up	$ 0.0348	$ 0.0356	$ 0.0008
Add PUBA True-up	$ 0.0064	$ -	$ (0.0064)
PCIA In Place	$ 0.0412	$ 0.0356	$ (0.0056)

SYSTEM AVERAGE PCIA IMPACTS: Vintage 2018 v. Vintage 2020

	PG&E		
$/kWh	Vintage 2018	Vintage 2020	Difference
PCIA without True-ups	$ 0.0345	$ 0.0345	$ (0.0000)
Add PABA True-up	$ 0.0064	$ (0.0068)	$ (0.0133)
Add PUBA True-up	$ 0.0020	$ -	$ (0.0020)
PCIA In Place	$ 0.0429	$ 0.0276	$ (0.0153)

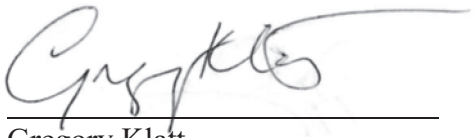
	SCE		
$/kWh	Vintage 2018	Vintage 2020	Difference
PCIA without True-ups	$ 0.0090	$ 0.0158	$ 0.0069
Add PABA True-up	$ 0.0148	$ 0.0055	$ (0.0093)
Add PUBA True-up	$ 0.0068	$ -	$ (0.0068)
PCIA In Place	$ 0.0305	$ 0.0213	$ (0.0092)

	SDG&E		
$/kWh	Vintage 2018	Vintage 2020	Difference
PCIA without True-ups	redacted	redacted	
PCIA With PABA True-up	$ 0.0348	$ 0.0356	$ 0.0008
Add PUBA True-up	$ 0.0064	$ -	$ (0.0064)
PCIA In Place	$ 0.0412	$ 0.0356	$ (0.0056)

VERIFICATION

I, Gregory Klatt, am authorized to make this verification on behalf of The Regents of the University of California, the School Project for Utility Rate Reduction, and E&B Natural Resources Management Corporation. I declare under penalty of perjury that the statements in the foregoing ***Petition of The Regents of the University of California, the School Project for Utility Rate Reduction and E&B Natural Resources Management Corporation to adopt, amend, or repeal a regulation pursuant to Public Utilities Code § 1708.5*** are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, I believe them to be true.

Executed on January 26, 2022, at Arcadia, California.



Gregory Klatt

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CERTIFICATE OF SERVICE RE PETITION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, THE SCHOOL PROJECT FOR UTILITY RATE REDUCTION, AND E&B NATURAL RESOURCES MANAGEMENT CORPORATION TO ADOPT, AMEND, OR REPEAL A REGULATION

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the ***Petition of the Regents of the University of California, The School Project for Utility Rate Reduction, and E&B Natural Resources Management Corporation to Adopt, Amend, or Repeal a Regulation*** on all parties of record in proceedings Rulemaking (R.) 17-06-026, Petition 18-09-001, and R.19-03-009, by serving an electronic copy on their email addresses of record or by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available, and on the Executive Director, Chief Administrative Law Judge, Energy Division Director, and Public Advisor, as follows:

Executive Director Rachel Peterson: rachel.peterson@cpuc.ca.gov
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Energy Division Director: EnergyDivisionDirector@cpuc.ca.gov
Public Advisor Allison Brown: allison.brown@cpuc.ca.gov

Executed on January 26, 2022, at Agoura Hills, California.

Michelle Dangott

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists

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FILER: CPUC
LIST NAME: LIST
LAST CHANGED: JANUARY 18, 2022

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